

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7552 of 1994

Between:

K.Sundaresam son of K. Ramachandraiah
GA-76, SBH colony , Gaddiannaram Hyderabad

..... PETITIONER

AND

- 1 Principal Secretary , Home Department ,
The State of AP Secretariat Hyderabad
- 2 The Registrar (Admn) High Court
AP ., Hyderabad
- 3 The Chief Metropolitan Magistrate
City Civil Court Hyderabad **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Certiorari, calling for records relating to Proceedings, Order Roc. No. 957/SO/92 dated 31/12/1993 and Dis. No. 4210/CMN/93 dated . 31/12/1993 issued by the Respondent 2 and 3 herein . withdrawing powers conferred on the petitioner and ordering cessation of office with effect from 31/12/1993, and quash the same by declaring them as arbitrary, illegal, unconstitutional excessive and violative of Arts. 14 and 16 of the Constitution of India as also violative of principles of natural justice, and consequently direct the Respondent to restore the petitioner office for the period of tenure of two years i.e., upto 14/06/1994 (AN) and pay his salary/honorarium for that period.

Counsel for the Petitioner : MR.S.A.CHARI

**Counsel for the Respondents : GP FOR HOME AND
MR.C.V.NAGARJUNA REDDY(SC FOR APHC)**

The Court made the following :

THE HON'BLE SRI DEVINDER GUPTA,

THE CHIEF JUSTICE

AND

HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITON NO.7552 OF 1994

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ORDER (Per G.Rohini, J)

The proceedings issued by the Registrar, High Court of A.P., Hyderabad, in exercise of powers conferred under Section 34(1) of the Code of Criminal Procedure, 1973 withdrawing the powers conferred on the petitioner as a Special Metropolitan Magistrate with immediate effect are assailed in this writ petition.

The facts which are not in dispute are as follows:

The 1st respondent – State of Andhra Pradesh by notification in G.O.Rt.No.1667, Home (Courts.B) Department, dated 27-05-1992 appointed the petitioner herein along with five others to function as Special Metropolitan Magistrate on conferment of powers under sub-section (1) of Section 18 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). Consequently, vide notification dated 01-06-1992 issued by the High Court of Andhra Pradesh in exercise of the powers conferred under sub-section (1) of Section 18 of Cr.P.C., 1973 read with rule 1 of the Rules framed under Sections 13 and 18 of the Code, the petitioner was conferred with all the powers of a Metropolitan Magistrate under the Criminal Procedure Code

in respect of particular cases or particular classes of cases triable by a Magistrate of the 2nd Class as may be specified by the Chief Metropolitan Magistrate, Hyderabad in the Metropolitan Area of Hyderabad to enable him to function as Special Metropolitan Magistrate, for a period of two years from the date he assumes charge. He assumed the Office on 15-06-1992 and according to the petitioner he is entitled to continue upto 14-06-1994. While so, he was served with the order of the High Court dated 31-12-1993 which was issued in exercise of the powers conferred under sub-section (1) of Section 34 of Cr.P.C. withdrawing all the powers conferred on the petitioner as a Special Metropolitan Magistrate with immediate effect in view of the fact that he has completed the age of 65 years as on 09-12-1993. The petitioner was also served with the consequential proceedings issued by the Chief Metropolitan Magistrate, Hyderabad dated 31-12-1993 informing that in view of the orders of the High Court, dated 31-12-1993 withdrawing all the powers conferred on him as Special Metropolitan Magistrate with immediate effect, he shall cease to hold the office with effect from 31-12-1993. Aggrieved by the same, this Writ Petition is filed contending that since the appointment of the petitioner was tenure appointment for a period of two years from the date he assumed the charge of his office, he had a vested right to continue upto 14-06-1994 and that the withdrawal of the powers under the impugned proceedings even before the tenure came to an end, without affording him any opportunity of hearing is arbitrary and illegal.

On behalf of the second respondent, a counter-affidavit has been filed stating that though the appointment of a Special Metropolitan Magistrate is for a fixed tenure, the same is subject to Section 18(2) of Cr.P.C. under which no person can be employed beyond the age of 65 years. Therefore, since the petitioner completed the age of 65 years as on 09-12-1993, second respondent vide communication dated 31-12-1993 withdrew all the powers conferred on the petitioner under Section 34(1) of Cr.P.C.

We have heard the learned Counsel for the parties and perused the material on record.

The learned Counsel for the petitioner vehemently contended that having

appointed the petitioner for a period of two years from the date he assumed the charge, it is not open to the respondents to withdraw the powers conferred on him abruptly on the ground that he has completed the age of 65 years. The fact that the petitioner has completed the age of 65 years as on 9-12-1993 has not been disputed, however the learned Counsel contends that neither Section 18 of Cr.P.C. nor any other provision under the Statute empowers the respondents to bring the tenure of the petitioner to an end on completion of the age of 65 years and therefore the impugned proceedings are without jurisdiction and liable to be set aside.

The learned Standing Counsel appearing for the respondents 1 and 2 submitted that the petitioner is not eligible to hold the office of the Special Metropolitan Magistrate after he has completed the age of 65 years and therefore the impugned proceedings have been rightly issued in exercise of power conferred under Section 34 (1) of the Code of Criminal Procedure.

Section 18 of the Code of Criminal Procedure which provides for the conferment of powers of Special Metropolitan Magistrates as amended by the State of Andhra Pradesh under A.P. Act 2 of 1992 with effect from 10-04-1992 runs as under :

1. *The High Court may, if requested by the Central or State Government, so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan Magistrate, in respect to particular cases or to particular classes of cases in any metropolitan area within its local jurisdiction:*

Provided that no such power shall be conferred on a person unless he possesses qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

2. *Such Magistrates shall be called Special Metropolitan Magistrates and shall be appointed for such term, not exceeding two years at a time, as the High Court may, by general or special order, direct.*

Provided that a person who is holding the office of Special Metropolitan Magistrate at the commencement of the Code of Criminal Procedure (Andhra Pradesh Amendment) Act, 1992, and has not completed sixty-five years of age shall continue to hold office for a term of two years from the date of his appointment.

(3)

A perusal of sub-section (1) of Section 18 of Cr.P.C. read with the proviso makes it clear that the conferment of powers of the Metropolitan Magistrate can be only on a person who possesses the qualifications or experience in relation to legal affairs as specified by the High Court. The High Court of A.P., in exercise of its powers conferred under Sections 13 and 18 of the Code of Criminal Procedure, issued ROC.No.63/SO/SO/74-2, dated 28-03-1974 making the rules specifying the qualifications to be possessed by a person for conferment of the powers as Special Judicial Magistrate or Special Metropolitan Magistrate under Sections 13 and 18 of Cr.P.C. As per Rule 1 of the said Rules, a person must not be over 65 years of age for being eligible for conferment of powers of a Special Judicial Magistrate or Special Metropolitan Magistrate. The conferment of power under sub-section (1) of Section 18 of Cr.P.C. being subject to qualifications prescribed by the High Court, undoubtedly no person can claim any right to continue beyond the age of 65 years. Hence, we are of the view that the petitioner cannot continue to hold the office on completion of sixty five years of age and the impugned proceedings have been rightly issued withdrawing the powers conferred on him as Special Metropolitan Magistrate with effect from 31-12-1993.

However, the learned Counsel for the petitioner while placing reliance upon the proviso to sub-section (2) of Section 18 of Cr.P.C. contended that the petitioner is entitled to hold office for a term of two years from the date of his appointment irrespective of the fact that he has completed 65 years of age. We are unable to accept the said contention since sub-section (2) of Section 18 of Cr.P.C. is only a transitory provision which is made applicable to the persons who are holding office of the Special Metropolitan Magistrate at the commencement of the A.P. Amendment Act 2 of 1992. It is to be noted that whereas the said Amendment Act came into force with effect from 10-04-1992, admittedly, the petitioner was appointed on 27-05-1992. Hence, the proviso to Section 18(2) of Cr.P.C. is not attracted. The decision rendered by a learned Single Judge in W.P.No.5586 of 1993 dated 6-8-1993, relied upon by the learned Counsel for the petitioner is not of any assistance to the case of the petitioner since in the said case admittedly the petitioner therein was holding the office as on the commencement of the Act 2 of 1992. The learned Single Judge while interpreting the affect of the proviso to Section 18(2) of Cr.P.C. held that the

petitioner therein who was admittedly holding the office as on the date of commencement of A.P. Act 2 of 1992 is entitled to hold the office of the Special Metropolitan Magistrate till the period of two years from the date of assumption of charge of his office is completed. The said case which was decided solely on the basis of the effect of the proviso to sub-section (2) of Section 18 of Cr.P.C. is not of any assistance to the contentions raised by the petitioner herein.

As expressed above, since the conferment of powers under sub-section (1) of Section 18 of Cr.P.C. is always subject to the conditions / qualifications prescribed by the High Court and the Rules prescribed by the High Court did specify that “the person must not be over 65 years of age”, the interpretation sought to be given by the learned Counsel for the petitioner to Section 18(2) of Cr.P.C. cannot be accepted and the claim of the petitioner that he is entitled to continue for a period of two years from the date of his appointment is without any basis and untenable.

For the aforesaid reasons, we do not find any merit in the Writ Petition and the same is accordingly dismissed. No costs.

(DEVINDER GUPTA, CJ)

(G.ROHINI, J)

Dt.08 –10-2004.

Gbs

To

- 1 Principal Secretary , Home Department ,
The State of AP Secretariat Hyderabad
- 2 The Registrar (Admn) High Court
AP ., Hyderabad
- 3 The Chief Metropolitan Magistrate
City Civil Court Hyderabad

4.2CCs to G.P. for Home, High Court of AP Bldgs, Hyderabad (OUT).

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